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No. 51039 FEB 14 2006

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In The
Supreme Court of the United States

DOES 1 and 2,

Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party In Interest.

**On Petition For Writ Of Certiorari
To The Court Of Appeal Of The State Of California
Second Appellate District, Division Three**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state court may compel production of private papers by enforcing a subpoena *duces tecum* issued without express statutory authority by a grand jury.
2. Whether a state court may compel production of private papers by enforcing criminal and grand jury subpoenas *duces tecum* without any showing of legal cause to warrant such production.
3. Whether these state grand jury subpoenas *duces tecum* are so vague and overbroad that they constitute general warrants.
4. Whether a state grand jury subpoena *duces tecum* to compel production of private papers relating to the religious relationship between a priest and his Church impermissibly chills the First Amendment religious rights of the parties.
5. Whether subpoenas *duces tecum* to compel production of employment files of priests and thereby infringe on Free Exercise of Religion rights protected by the First Amendment and legitimate expectations of privacy protected by the Fourth Amendment must be strictly scrutinized.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is *Roman Catholic Archbishop of Los Angeles and Does 1 and 2 v. Superior Court*, 131 Cal. App.4th 417 (2005), *review denied*, Cal. LEXIS 13083 (Nov. 16, 2005). Appendix 1-63.

The underlying opinion of the Los Angeles County Superior Court has been filed under seal. Sealed Appendix ("SA") Ex. 3 at 63-122.¹

The order of the Supreme Court of California denying discretionary review is attached. Appendix 65.

JURISDICTION

The Superior Court's order was filed on September 7, 2004. Petitioners filed a petition for writ of mandate on January 28, 2005. The Court of Appeal's opinion was filed on July 25, 2005. The Supreme Court's order was filed on November 16, 2005.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) (2005) (state-court judgments may be reviewed by writ of certiorari where any "right, privilege, or immunity is . . . claimed under the Constitution.").

¹ The opinion is filed under seal because it includes an appendix that the Superior Court sealed and ordered not to be disclosed to the public because it discloses grand jury proceedings. SA Ex. 3 at 97:1-5, 98-121. The opinion and four other sealed documents have been filed under seal in the concurrent Petition for a Writ of Certiorari filed by the Roman Catholic Archbishop of Los Angeles, which are incorporated in this Petition by reference. With this Petition, Petitioners have also filed four additional exhibits under seal for the same reasons, and numbered them consecutively to the sealed exhibits already filed in connection with the Archbishop's Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides in its entirety:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (United States Constitution, Amendment IV.)

The Religion Clauses of the First Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . " (United States Constitution, Amendment I.)

STATEMENT OF THE CASE

This Petition arises from the well-known investigation of allegations of sexual child abuse by Roman Catholic priests in Southern California. Although it involves only two grand jury subpoenas duces tecum, Petitioners expect that the outcome will control the procedures used in many future grand jury investigations.

This case raises important questions concerning the scope and application of the Fourth Amendment to compelled production of private papers pursuant to criminal and grand jury subpoenas duces tecum, in particular whether a court may enforce such subpoenas without a statute expressly authorizing them, and without any showing of legal cause to warrant such compelled production.

The case also raises important questions concerning the scope and application of the Religion Clauses of the First Amendment, particularly when they intersect with the Fourth Amendment when a grand jury attempts to compel production of private papers maintained by a

church concerning the confidential, pastoral, and episcopal counseling between a priest and his bishop. The Roman Catholic Archbishop of Los Angeles, a corporation sole ["Archdiocese," sometimes hereinafter] has already filed a Petition for Writ of Certiorari concerning this case, raising issues concerning the Religion Clauses of the First Amendment, and Petitioners join in the arguments made by the Archdiocese.

The effort by California grand juries to compel production of private Church files began in June, 2002, when a Los Angeles grand jury served three subpoenas duces tecum on the Archdiocese concerning the personnel records of three priests. Those priests, also represented by Petitioners' counsel herein, filed motions to quash the subpoenas on numerous grounds, including that there was no California statute generally authorizing a grand jury to issue subpoenas duces tecum, and even if the grand jury had such power, the subpoenas were invalid because they failed to include any affidavit of good cause and materiality, as required by California statute and case law for other judicial subpoenas duces tecum. The priests in that case also alleged that the subpoenas amounted to overbroad "fishing expeditions" into sensitive Church files. Those motions resulted in a published opinion on the subject denying the motions on Constitutional grounds, but all of the grand jury subpoenas duces tecum were quashed later in the proceedings, on June 25, 2004, on the grounds that they sought to investigate allegations of crimes for which prosecution was barred pursuant to the decision in *Stogner v. California*, 539 U.S. 607 (2003).² The appellate decision regarding the facial validity of those subpoenas is *M.B. v. Superior Court*, 103 Cal. App.4th 1382 (2002). It is included in the Appendix to this Petition, at Appendix 66-83, pursuant to Supreme Court Rule

² The total number of subpoenas duces tecum issued by the Los Angeles grand jury that had to be dismissed because of the *Stogner* decision had grown to 31.